

So you've worked out an option agreement with a seller on some property where you hope to build a house. Or maybe instead of an option agreement it's a real estate contract or deed of trust and promissory note.

If the deal goes squirrely, can you enforce the agreement?

Here's what the Washington Supreme Court said just a few weeks ago about specific enforcement of real estate agreements.

To convey real estate the parties need in writing thirteen material terms:

- (a) Time and manner for transferring title;
- (b) Procedure for declaring forfeiture;
- (c) Allocation of risk with respect to damage or destruction;
- (d) Insurance provisions;
- (e) Responsibility for:
  - (i) Taxes,
  - (ii) Repairs, and
  - (iii) Water and utilities;
- (f) Restrictions, if any, on:
  - (i) Capital improvements,
  - (ii) Liens,
  - (iii) Removal or replacement of personal property, and
  - (iv) Types of use;
- (g) Time and place for monthly payments; and
- (h) Indemnification provisions.

Sea-Van v. Hamilton, 125 Wn.2d 120, 881 P.2d 1035, 1039 (1994).

In reaching this decision the Court relied on a forty-year old decision as well as a more recent case from just last year. And the Court seemed somewhat perturbed when it said:

It seems necessary to reiterate once again that negotiation, not litigation, is the proper method for agreeing upon these vital terms. Agreements to buy and sell real estate must be definite enough on material terms to allow enforcement without the court supplying those terms.

One of the keys to an option agreement that will likely pass muster is to attach the filled out conveyance or financing instrument with the thirteen magic

terms. If this practice is not the standard operating procedure in your business, it should be. You should also have the agreement notarized and then recorded. Standard forms used by local escrow agents usually have all the terms. Avoid store-bought forms.

If the deal goes sour, just remember what the Court did in one of the two cases relied upon in the case mentioned above: The buyer won specific performance and attorneys' fees in the lower court, but he had to give an easement across the property to the seller. The buyer refused to give the easement, and so he appealed. The Washington State Supreme Court reversed, saying the seller did not have to sell, and the Court granted the seller attorneys' fees to boot.